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SENATE

REPORT
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# BILINGUAL EDUCATION ACT AMENDMENTS OF 1987

JUNE 30 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

## REPORT

[To accompany S. 1238]

The Committee on Labor and Human Resources reports an original bill (S. 1238), to amend the Bilingual Education Act to make Federal financial assistance available for children of limited English proficiency without mandating a specific method of instruction, to encourage innovation at the State and local level through greater administrative flexibility, to improve program operations at the Federal level, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

### I. SUMMARY OF THE BILL

S. 1238, the Bilingual Education Act Amendments of 1987, amends the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act of 1965) to provide for greater flexibility in funding educational programs for children of limited English proficiency and to place a limit on the length of time a student can participate in a federally funded bilingual education program.

The bill would increase the setaside for special alternative instructional programs from 4 percent of all bilingual education funds to up to 25 percent of Part A program dollars. The bill also provides that any current recipient of a grant under the Bilingual Education Act would be held harmless and allowed to complete that grant cycle which is some cases might include continuation through a fourth and fifth year.

The bill requires the Secretary of Education to give priority in awarding grants under the special alternative instructional programs to local educational agencies (LEAs) that have schools in which many different languages are represented, to LEAs which do

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not have personnel qualified to provide bilingual education instructional services, and to LEAs that have a small number of students and that because of isolation or regional location are unable to obtain a bilingual teacher.

The bill provides that students may not participate in a federal bilingual education program for more than three years if a separate state or local program exists. If no such program exists, an individual student may continue in a federal program for an additional year if school personnel determine that the individual's failure to master English is impeding his or her academic progress or ability to meet grade promotion or graduation standards. After a fourth year, a student must be reevaluated in order to remain in a federal program for a fifth year. In addition, when the student is to be retained for the additional year or years in the program, the evaluation must include plans for concentrating on the goal of enhancing the student's competency in English. No student may continue in a federal program after five years.

The effective date of this bill is July 1, 1987. However, if these amendments become law after this date, it is not intended that they take effect retroactively.

## II. Legislative History

In 1986, legislation was introduced that would have provided the Secretary of Education complete flexibility in making grants under the Bilingual Education Act. This bill, S. 2256, would have removed the 4 percent cap on the level of funds that could be expended on alternative programs as well as the statutory requirement that 75 percent of the Part A funds be spent on transitional bilingual education using native language instruction. The bill was not considered in the 99th Congress, although a hearing was held on the measure by the Subcommittee on Education, Arts, and Humanities on June 5, 1986.

On January 27, 1987, S. 383, a bill identical to S. 2256, was introduced. A compromise bill, S. 857, was introduced on March 26, 1987. This bill included a 25 percent setaside of all funds for alternative instructional programs. Through further negotiations, a provision was added instructing the Secretary to allocate up to 25 percent of Part A (program) funds for special alternative programs, keeping the 75 percent transitional bilingual education setaside in law. The bill holds harmless current grantees through the entire duration of their grants, which in some cases might include continuation through a fourth and fifth year. The final compromise also included a limit on the time a student could participate in a federal bilingual education program to three years, unless an individual evaluation showed it necessary for the student's mastery of English to continue one more year. A second year extension is possible only if accompanied by a second evaluation.

This final compromise was considered by the Labor and Human Resources Committee, which agreed to poll out S. 857 as amended by a committee amendment on May 1, 1987.

However, because under the standing rules of the Senate an objection may lie against a bill polled from a Committee rather than voted out by the physical presence of a majority, on May 15, 1987,

the Committee reported to the Senate an original bill identical to S. 857 as amended. That bill became S. 1238 and reflects the final compromise of the Committee Members.

## III. Background and Need for Legislation

In 1984, the Bilingual Education Act was amended to include a new provision that permitted the Secretary of Education to allot 4 percent of the funds under the Act for special alternative instructional programs. This new category of funding recognized the need that exists in many schools and school districts to provide English language instruction for non- or limited-English speaking children without providing instruction in the student's native language.

Special alternative programs are programs that do not use the student's native language to teach that child English. Under current law, 75 percent of the Part A funds must be used for transitional bilingual education, a method that first relies on the student's native language and then increases the use of English over time, sometimes several years. Special alternative instructional programs include English as a Second Language (ESL), English for Speakers of Other Languages (ESOL), and structured immersion. These alternative methods use teachers trained in the mechanics of teaching a language, who can use cues in the student's native language. Generally, these classes are conducted solely in English.

Because of the many languages in our school systems and the national shortage of qualified teachers, bilingual instruction is not feasible for all schools.

The Committee requested the United States General Accounting Office to conduct a study of the concentrations of limited English proficient students in the states. The GAO completed the study in April, 1987 and found that, on average, among nine states that aggregate their data concerning the concentration of limited English proficient students by school building, 78 percent of their students were in high concentration areas, while 22 percent were in low concentration areas. In 17 states which aggregate this data by school district, on average, 72 percent were in high concentration areas while 28 percent were in low concentration areas.

Also, a study of the country's 60 larger school districts done by the American Association of School Administrators (AASA) in April of 1987 shows that 54 school districts reported that 40 or more languages other than English were spoken as the first language of enrolled students. The average number of languages represented was 10. In single schools, the survey found four schools having between 30 and 60 languages other than English.

Seventy-eight percent of the schools had transitional bilingual programs and 22 percent had only ESL programs. There was an average of 3.5 teachers in each school district for bilingual education.

AASA, in its survey remarked, "this data reports that most of the reporting LEAs do not have sufficient ability to handle large numbers of LEP students of many diverse languages. The data states there are many languages in schools and there are not enough teachers to instruct in these languages. As seen by the data, no one single approach can fit all of the situations, therefore, it is necessary to do what's best for each district."

While many schools are unable to provide bilingual teachers, they are committed to helping their non-English proficient students to become proficient in English and have sought to use ESL or structured immersion to provide instruction to these children.

Until 1984, federal bilingual education funds were not available for programs that did not use the student's native language. Therefore, ESL or structured immersion projects could not receive federal funding. When the 4-percent setaside for special alternatives was put in place, the response from school districts indicated that they were serious about serving non-English speaking children in the most efficient and effective way available. Many schools are simply unable to fund teachers who know the student's native language. While this is generally not a problem with such languages as Spanish and French, there are school districts which cannot hire qualified teachers because of geographic location. The Committee feels that schools such as these, with significant non-English speaking student populations, should be able to receive federal aid. The 4-percent setaside has helped, but a great need still exists.

## IV. Committee Views

In approving S. 1238, the Committee underscores its support of bilingual education and the Bilingual Education Act. S. 1238 continues current programs and practice while also allowing greater program flexibility to serve limited-English-proficient (LEP) children more effectively.

The best way to provide English language instruction to limited-English-proficient children is a subject that has been much debated by educators, policymakers, students, and parents. The discussion focuses on what type of language training is most effective to bring non-English-speaking children up to par with their English-speaking peers. Positions range from strong support of transitional bilingual education, an approach that employs instruction in the student's native language at the beginning and increases the use of English as time goes by, to strong support of methods which rely solely on English to teach the student.

Children learn at different speeds, thereby necessitating review of their appropriate placement in transitional bilingual education classes and in classes that rely more heavily on English. Students should be able to move ahead at their own speed and ability, to allow them to achieve fluency in English as quickly as possible as well as to maintain grade level and promotion standards.

S. 1238 supports both teaching approaches—transitional bilingual education and special alternative methods, such as ESL, ESOL, or structured immersion.

This bill does not make a statement as to which instructional approach is better, nor do the Committee Members wish to debate the merits of each type of language instruction. Instead, the Committee believes that there is a need for greater flexibility at the school district level. The Committee recognizes the need of schools and school districts that have a multitude of languages represented in their student bodies, but are faced with a lack of bilingual teachers in any but the most common languages.

Section 2 of the bill adds a new paragraph to the purposes of the Act, stating that, regardless of what type of teaching method is used under this program, the twin goals of the program shall be English proficiency and the development of academic achievement. This language is included to ensure that quality is highlighted in all instructional programs for limited English proficient students, as it should be in every education program, whether funded by the federal government or not. Both goals are equally important, and one should not preclude the other in the student's daily courses.

Section 3 of the bill provides that the Secretary of Education may reserve up to 25 percent of the funds appropriated under Part A to make grants for special alternative instructional programs. The 75-percent setaside of Part A funds for funding transitional bilingual education programs is not altered, as a recognition of the importance and success of those programs.

Under Part A, there are several other authorized programs, including developmental bilingual education, programs of academic excellence, family English literacy programs, and special programs for preschool, special education, or gifted and talented. In order to accommodate these other programs under the 75-percent setaside for transitional and the 25-percent setaside for special alternatives, the bill provides that these programs be funded under either program, depending upon which program of learning instruction is used. In other words, a family English literacy program would now be considered as part of the transitional pot of funds or the special alternative pot of funds, depending upon the design of the program.

Section 4 makes a significant change by placing a limit on the amount of time a student may participate in a federal bilingual education program. While the Committee has no objection to any child continuing study in his or her native language, the Members feel that a fundamental goal of this federal program is proficiency in English. The Committee hopes that students will be able to accomplish this goal within three years, although some members would have preferred limiting participation to two years. However, this restriction applies only to classes funded under the federal Bilingual Education Act.

If, after three years of participation in a federal bilingual education program, a student has access to a separate state or local bilingual program, that student may enter the state or local program with no further restrictions. However, the Committee hopes that students are able to become proficient in English so that they can enroll as soon as possible in English classes, whether or not state or local programs are available.

The Committee recognizes that some students, for personal or cognitive reasons, may have a difficult time mastering English within three years, and that this may impede the students' ability to meet grade promotion or graduation standards. For this reason, the Committee included a provision to allow for individual review and evaluation of a student with any eye toward continuing their participation in a federal program for longer than three years.

After the third year of participation in a federal bilingual education program, a student who needs further English language instruction and has no recourse to a state or local program may be evaluated by the teachers and school personnel familiar with the

student's overall academic performance. The evaluation would be conducted by more than just the language teacher and could include such people as the building principal and/or other teachers familiar with the individual student's progress. The results of the evaluation must be made available to the student's parents.

If such an evaluation shows that the student's overall academic performance is lacking because of poor mastery of English, that student may remain in the federal program for an additional year. At the end of the fourth year, if the student is still performing poorly, another evaluation may be conducted. The results of that evaluation may indicate that the student needs yet a fifth year in the federal program. After five years, however, a student's participation in the federal bilingual education program would be terminated. Again, if a state or local program exists, there is no prohibition against the student participating in that program.

For students who remain in a federal program for a fourth or fifth year, it is the Committee's intent that those classes strongly emphasize the mastery of English.

Section 4 also allows local educational agencies, institutions of higher education and private nonprofit organizations to use funds under this act to intensify instruction for limited English proficient students. They may do so by expanding the educational calendar to include programs before and after school and during the summer months; by lowering the per pupil ratios, including the use of professional and volunteer aids; and by using new educational technologies.

The Committee believes these extra efforts where needed will make this program more effective and better help students to learn English and meet grade promotion and graduation standards.

Section 5 sets priorities for the funding of special alternative instructional programs. These priorities are set in recognition of the need of schools for flexibility in receiving an alternative grant. As in all the other grant programs under this Act, peer review is required, and grants must be of high quality to receive funds.

A grant shall receive priority for funding if it is on behalf of (A) a local educational agency having schools in which many languages are represented; (B) a local educational agency that does not have personnel qualified to provide bilingual instructional services; or (C) a local educational agency which has a small number of students in the schools of such agency and that because of isolation or regional location is unable to obtain a bilingual teacher.

It is anticipated by the Committee that these are the most common instances in which a school district would apply for an alternate instructional grant and the ones which should be given priority. Certainly, the main reasons are a lack of bilingual teachers and large numbers of languages represented in the school. However, the Committee does not intend to foreclose the funding of high quality applications that fall outside of these priorities. In those cases, the applications would be judged on their merit and be reviewed by peers, as are all other applications. It is consistent with the changes contained in S. 1238 to allow the funding of experimental or innovative special alternative instructional programs.

The Committee feels very strongly about peer review for this program. Nothing in S. 1238 changes the long-standing practice of se-

lecting grantees based on the merit of the applications using peer review. The Committee does not expect the Department of Education to fund special alternative instructional programs if they are not deemed meritorious after peer review. Likewise, the Committee does not expect the Department of Education to fund transitional bilingual education programs if they are not deemed meritorious after peer review.

The effective date of S. 1238 is July 1, 1987, so that these changes would be in place for academic year 1987-88. However, if these amendments become law after this date, it is not intended that they take effect retroactively.

## V. Vote In Committee

On May 15, 1987, the Labor and Human Resources Committee met in Executive Session and decided to report favorably the bill again, as a quorum was present. Senator Kennedy offered an original bill, based on S. 857 as amended, and the original bill was reported favorably from the Committee by an actual vote of 15 to 1, as follows:

| YEAS | NAYS |
|---|---|
| Kennedy | Matsunaga |
| Pell | |
| Metzenbaum | |
| Dodd | |
| Simon | |
| Harkin | |
| Adams | |
| Mikulski | |
| Hatch | |
| Stafford | |
| Quayle | |
| Thurmond | |
| Weicker | |
| Cochran | |
| Humphrey | |

## VI. Regulatory Impact Statement

The Committee has determined that there will be no increases in the regulatory burden imposed by this bill.

## VII. Section-by-Section Analysis

*Section 1.* Provides that the act is to be cited as the "Bilingual Education Act Amendments of 1987."

*Section 2.* Provides that the purpose of programs which serve limited English proficient students is the development of academic achievement and English proficiency.

*Section 3.* Amends the authorization of appropriations under the Bilingual Education Act (hereinafter referred to as "the Act"). This section would remove a requirement from current law that restricts the amount of funds available for special alternative instructional programs to 4 percent of the sums appropriated under the Act and in its place provides that the Secretary may award not to

exceed 25 percent of Part A funds for special alternative programs in any fiscal year. This section further provides that the above reservation requirement change does not affect grants awarded for the 1987 fiscal year or any year in which they are continued. This section also makes technical changes adding programs under section 720(a) (2), (4), (5), and (6) which may receive part of the 75 percent of funds hitherto reserved solely for programs of transitional bilingual education or which may receive part of the 25 percent funds for special alternative programs.

*Section 4.* Provides that a student in a federal bilingual education program of any type may be enrolled for no longer than three years, except in a situation where (A) only federal funds are available for bilingual education and (B) an evaluation conducted by the school shows that the student's failure to master English is impeding his academic progress, with a prohibition of enrolling for more than five years those who meet the exception requirements. This section also provides that educators may intensify instruction for limited English proficient students by expanding the calendar year, lowering the per pupil ratios, or introducing technology to the course.

*Section 5.* Provides that applications for special alternative grants under this bill are to receive priority if the application is made on behalf of (A) a local education agency having schools in which many languages are represented; (B) a local education agency that does not have personnel qualified to provide bilingual instructional services; or (C) a local educational agency having a small number of students in the schools that is unable to obtain a bilingual teacher because of isolation or regional location.

*Section 6.* Makes technical amendments to the bill to (1) more accurately describe the services for limited English proficient individuals under the Library Services and Construction Act, as amended, and (2) correct certain technical errors in sections 721(b), 721(f), and 733 of the Act.

*Section 7.* Provides that the amendments proposed in the bill would take effect on July 1, 1987, so that these changes could be implemented for the 1987–88 academic year.

## VIII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
*Washington, DC, June 12, 1987.*

Hon. Edward M. Kennedy,
*Chairman, Committee on Labor and Human Resources,*
*U.S. Senate, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has examined the federal cost impact of S. 1238, the Bilingual Education Amendments of 1987, as ordered reported by the Committee on Labor and Human Resources on May 15, 1987. Based on our analysis, there would be no increase in federal, state or local government costs as a result of passage of this bill.

S. 1238 does not alter the authorization for the bilingual education programs but lowers the percentage of total funds set aside for traditional bilingual education programs and increases the percent-

age set aside for special alternative instructional programs. These grants are awarded to school districts on a competitive basis.

Please call me if you have any questions or have your staff contact Deborah Kalcevic (226-2820).

With best wishes,

Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

## IX. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

### TITLE II—BASIC SKILLS IMPROVEMENT

[Repealed October 1, 1982, P.L. 97-35, sec. 587(a), 95 Stat. 480.]

### TITLE III—SPECIAL PROJECTS

[Repealed October 1, 1982, P.L. 97-35, sec. 587(a), 95 Stat. 480.]

### TITLE IV—EDUCATION IMPROVEMENT, RESOURCES, AND SUPPORT

[Repealed October 1, 1982, P.L. 97-35, sec. 587(a), 95 Stat. 480.]

### TITLE V—STATE LEADERSHIP

[Repealed October 1, 1982, P.L. 97-35, sec. 587(a), 95 Stat. 480.]

### TITLE VI—EMERGENCY SCHOOL AID

[Repealed October 1, 1982, P.L. 97-35, sec. 587(a), 95 Stat. 480.]

### TITLE VII—BILINGUAL EDUCATION PROGRAMS

#### SHORT TITLE

SEC. 701. This title may be cited as the "Bilingual Education Act."

POLICY; APPROPRIATIONS

SEC. 702. (a) Recognizing—

(1) that there are large and growing numbers of children of limited English proficiency;

(2) that many of such children have a cultural heritage which differs from that of English proficient persons;

(3) that the Federal Government has a special and continuing obligation to assist in providing equal educational opportunity to limited English proficient children;

*(4) that, regardless of the method of instruction, programs which serve limited English proficient students have the equal ly important goals of developing academic achievement and English proficiency;*

[(4)] *(5)* that the Federal Government has a special and continuing obligation to assist language minority students to acquire the English language proficiency that will enable them to become full and productive members of society;

[(5)] *(6)* that a primary means by which a child learns is through the use of such child's native language and cultural heritage;

[(6)] *(7)* that, therefore, large numbers of children of limited English proficiency have educational needs which can be met by the use of bilingual educational methods and techniques;

[(7)] *(8)* that in some school districts establishment of bilingual education programs may be administratively impractical due to the presence of small numbers of students of a particular native language or because personnel who are qualified to provide bilingual instructional services are unavailable;

[(8)] *(9)* that States and local school districts should be encouraged to determine appropriate curricula for limited English proficient students within their jurisdictions and to develop and implement appropriate instructional programs;

[(9)] *(10)* that children of limited English proficiency have a high dropout rate and low median years of education;

[(10)] *(11)* that the segregation of many groups of limited English proficient students remains a serious problem;

[(11)] *(12)* that both limited English proficient children and children whose primary language is English can benefit from bilingual education programs, and that such programs help develop our national linguistic resources;

[(12)] *(13)* that research, evaluation, and data collection capabilities in the field of bilingual education need to be strengthened so as to better identify and promote those programs and instructional practices which result in effective education;

[(13)] *(14)* that parent and community participation in bilingual education programs contributes to program effectiveness; and

[(14)] *(15)* that because of limited English proficiency, many adults are not able to participate fully in national life, and that limited English proficient parents are often not able to participate effectively in their children's education.

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children and to promote educational excellence (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, (B) to encourage the establishment of special alternative instructional programs for students of limited English proficiency in school districts where the establishment of bilingual education programs is not practicable or for other appropriate reasons, and (C) for those purposes, to provide financial assistance to local educational agencies, and, for certain related purposes, to State educational agencies, institutions of higher education, and community organizations. The programs assisted under this title include programs in elementary and secondary schools as well as related preschool and adult programs which are designed to meet the educational needs of individuals of limited English proficiency, with particular attention to children having the greatest need for such programs. Such programs shall be designed to enable students to achieve full competence in English. Such programs may additionally provide for the development of student competence in a second language.

(b)(1) For the purposes of carrying out the provisions of this title, there are authorized to be appropriated for fiscal year 1985 and each of the three succeeding years such sums as may be necessary, subject to paragraph (7).

There are further authorized to be appropriated to carry out the provisions of section 732, such sums as may be necessary for fiscal year 1985 and each of the three succeeding fiscal years, subject to paragraph (7).

[(3) From the sums appropriated under paragraph (1) for any fiscal year which do not exceed $140,000,000, the Secretary shall reserve 4 percent for special alternative instructional programs and related activities authorized under this Act. From the sums appropriated under paragraph (1) for any fiscal year in excess of $140,000,000, the Secretary shall reserve 50 percent for special alternative instructional programs and related activities authorized under this Act, except that the amount of funds reserved for special alternative instructional programs and related activities pursuant to this paragraph shall not exceed 10 percent of the funds appropriated under paragraph (1).]

*(3) From the sums appropriated under paragraph (1) for part A for any fiscal year, the Secretary may reserve not to exceed 25 percent for special alternative instructional programs and related activities authorized under section 721(a)(3) and may include programs under section 721(a) (2), (4), (5), and (6).*

(4) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 60 percent for the programs carried out under part A of this Act; and of this amount, at least 75 percent shall be reserved for the programs of transitional bilingual education carried out under [section 721(a)(1)] *sections 721(a)(1), and may include programs under section 721(a) (2), (4), (5), and (6).*

(5) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 25 percent for training activities carried out under part C.

(6) The Secretary shall reserve from the amount not reserved pursuant to paragraphs (4) and (5) of this subsection such amount as may be necessary, but not in excess of 1 percent thereof, for the purpose of section 752.

(7) Nothwithstanding paragraphs (1) and (2), no amount in excess of $176,000,000 is authorized to be appropriated to carry out the provisions of this title (including section 732) for fiscal year 1985.

*(8) The reservation required by paragraph (3) shall not result in changing the terms, conditions, and negotiated levels of any grant awarded in fiscal year 1987 to which section 721(d)(1)(A), 721(d)(1)(C), 721(d)(2), or 721(d)(3) applies.*

DEFINITIONS; REGULATIONS

SEC. 703. (a) The following definitions shall apply to the terms used in this title:

(1) The terms "limited English proficiency" and "limited English proficient" when used with reference to individuals means—

(A) individuals who were not born in the United States or whose native language is a language other than English;

(B) individuals who come from environments where a language other than English is dominant, as further defined by the Secretary by regulation; and

(C) individuals who are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, subject to such regulations as the Secretary determines to be necessary;

and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(2) The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

(3) The term "low-income" when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of title I of the Elementary and Secondary Education Act of 1965.

(4)(A) The term "program of transitional bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and to the extent necessary to allow a child to achieve competence in the English language, instruction in the

child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(B) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

(C) In such courses or subjects of study as art, music, and physical education, a program of transitional bilingual education shall make provision for the participation of children of limited English proficiency in regular classes.

(D) Children enrolled in a program of transitional bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(5)(A) The term "program of developmental bilingual education" means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which such program is applicable, structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(B) Where possible, classes in programs of developmental bilingual education shall be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(6) The term "special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. Such programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide, with respect to the years of study to which such program is applicable, structured English language instruction and special instructional services which will allow a child to achieve com-

petence in the English language and to meet grade-promotion and graduation standards.

(7) The term "family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. Such programs of instruction may be conducted exclusively in English or in English and the student's native language. Where appropriate, such programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in such programs shall be accorded to the parents and immediate family members of children enrolled in programs assisted under this title.

(8) The term "programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(9) The term "Office" means the Office of Bilingual Education and Minority Language Affairs.

(10) The term "Director" means the Director of the Office of Bilingual Education and Minority Languages Affairs.

(11) The term "Council" means the National Advisory and Coordinating Council on Bilingual Education.

(12) The term "Secretary" means the Secretary of Education.

(13) The term "other programs for persons of limited English proficiency" when used in this title means any programs within the Department of Education directly involving bilingual education activities serving persons of limited English proficiency, such as the programs carried out in coordination with the provisions of this title pursuant to part E of title IV of the Carl D. Perkins Vocational Education Act, and section 306(a)(11) of the Adult Education Act, and programs and projects serving **[**areas with high concentrations of persons**]** *individuals of* limited English proficiency pursuant to section 6(b)(4) of the Library Services and Construction Act.

(b)(1) In prescribing regulations under this title, the Secretary shall, through the National Advisory and Coordinating Council on Bilingual Education, consult with State and local educational agencies, organizations representing persons of limited English proficiency, and organizations representing teachers and other personnel involved in bilingual education.

(2) The Secretary shall not prescribe under this title any regulations further defining the terms defined in paragraphs (4), (5), (6), (7), and (8) of subsection (a), or any regulations restricting or expanding the definitions contained in such paragraphs.

(c) Parents of children participating in programs assisted under this title shall be informed of the instructional goals of the program and the progress of their children in such program.

## PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

### BILINGUAL EDUCATION PROGRAMS

SEC. 721. (a) Funds available for grants under this part shall be used for the establishment, operation, and improvement of——

(1) programs of transitional bilingual education;

(2) programs of developmental bilingual education;

(3) special alternative instructional programs for students of limited English proficiency;

(4) programs of academic excellence;

(5) family English literacy programs;

(6) bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted under this Act; and

(7) programs to develop instructional materials in languages for which such materials are commercially unavailable.

[(1)(A)] (b)*(1)* A grant may be made under subsection (a)(1), (2), (3), or (4) of this section only upon application therefore by one or more local educational agencies or by institutions of higher education, including junior or community colleges, applying jointly with one or more local educational agencies.

[(B)] *(2)* A grant may be made under subsection (a)(5) or (6) only upon application therefore by one or more local educational agencies; institutions of higher education, including junior or community colleges; and private nonprofit organizations, applying separately or jointly.

(c)(1) Any application for a grant authorized under subsection (a) of this section shall be made to the Secretary at such time, and in such manner, as the Secretary deems appropriate.

(2) Applications for grants authorized under subsections (a)(1), (a)(2), and (a)(3) of this section, shall contain information regarding—

(A) the number of children enrolled in programs conducted by the local educational agency;

(B) the number of children residing in the area served by the local educational agency who are enrolled in private schools;

(C)(i) the number of children enrolled in public and private schools in the area served by the local educational agency who are limited in their English proficiency; (ii) the method used by the applicant to make this determination; and (iii) evidence of the educational condition of the limited English proficient students, such as reading, mathematics, and subject matter test scores, and, where available, data on grade retention rates, rates of referral to or placement in special education programs, and student dropout rates;

(D) the number of limited English proficient children who are enrolled in instructional programs specifically designed to meet their educational needs, as well as descriptions of such programs;

(E) the number of limited English proficient children enrolled in public or private schools in the area served by the

local educational agency who need or could benefit from education programs such as those assisted under this title;

(F) the number of children who are to receive instruction through the proposed program and the extent of their educational needs;

(G) a statement of the applicant's ability to serve children of limited English proficiency, including an assessment of the qualifications of personnel who will participate in the proposed project and of the need for further training of such personnel;

(H) the resources needed to develop and operate or improve the proposed program;

(I) the activities which would be undertaken under the grant and how these activities will improve the educational attainment of students and expand the capacity of the applicant to operate programs such as those assisted under this Act when Federal assistance under this section is no longer available; and

(J) the specific educational goals of the proposed program and how achievement of these goals will be measured.

[(3) Applications for grants authorized under subsection (a)(3) of this section from applicants who desire to obtain priority in the awarding of such grants may contain information regarding (A) the administrative impracticability of establishing a bilingual education program due to the presence of small number of students of a particular native language, (B) the unavailability of personnel qualified to provide bilingual instructional services, or (C) the applicant's current or past efforts to establish a bilingual education program.]

*(3) An application for a grant under subsection (a)(3) of this section shall receive priority if the application is made on behalf of (A) a local educational agency having schools in which many languages are represented; (B) a local educational agency that does not have personnel qualified to provide bilingual instructional services; or (C) a local educational agency having a small number of students in the schools of such agency that because of isolation or regional location is unable to obtain a native language teacher.*

(4) Applications for grants authorized under subsection (a)(4) shall contain information regarding—

(A) the number of children served by the existing bilingual education program and evidence of their educational condition prior to enrollment in the program;

(B) a description of the existing program as well as the educational background and linguistic competencies of program personnel;

(C) the extent to which the program has promoted student academic achievement as indicated by objective evidence, such as improvements in language, mathematics, and subject matter test scores; grade retention rates; rates of referral to or placement in special education programs; student dropout rates; and, where appropriate, postsecondary education and employment experiences of students;

(D) the extent of parent involvement in and satisfaction with the existing bilingual education program; and

(E) how the activities carried out under the grant would utilize and promote programs of academic excellence which employ bilingual educational practices, techniques, and methods.

(5) Applications for grants authorized under subsection (a)(5) shall contain information regarding—

(A) the number of limited English proficient parents and out-of-school family members of limited English proficient students who would be served by the English literacy program;

(B) the activities which would be undertaken under the grant and how these activities will promote English literacy and enable parents and family members to assist in the education of limited English proficient children;

(C) the extent to which the persons to be served by the program have been involved in its development;

(D) applicant's prior experience and performance in providing educational programs to limited English proficient adults and out-of-school youth;

(E) with respect to applications by a local educational agency, the extent to which limited English proficient students enrolled in the educational agency are served by programs specifically designed to meet their needs; and

(F) with respect to other applicants, a description of how the applicant will coordinate its program with a local education agency to ensure that the program will help limited English proficient family members promote the academic progress of limited English proficient children.

(d)(1)(A) Grants made pursuant to subsections (a)(1), (a)(2), and (a)(3) of this section shall be for three years.

(B) During the first six months of grants made pursuant to subsections (a)(1), (a)(2), and (a)(3) of this section, an applicant shall engage exclusively in preservice activities. Such activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the educational program and to enable parents and family members to assist in the educaion of limited English proficient children. This subparagraph may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional program.

(C) Upon reapplication, grants authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall be renewed for two additional years unless the Secretary determines that—

(i) the applicant's program does not comply with the requirements set out in this title;

(ii) the applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or

(iii) there is no longer a need for the applicant's program.

(D) Parents or legal guardians of students identified for enrollment in bilingual education programs shall be informed of (i) the reasons for the selection of their child as in need of bilingual education, (ii) the alternative educational programs that are available, and (iii) the nature of the bilingual education program and of the

instructional alternatives. Parents shall also be informed that they have the option of declining enrollment of their children in such programs and shall be given an opportunity to do so if they so choose.

(2) Grants made pursuant to subsections (a)(4) and (a)(5) shall be for three years.

(3) Grants made pursuant to subsections (a)(6) and (a)(7) shall be for a period of one to three years.

*(4)(A) No student may be enrolled in a bilingual program for which a grant is made under subsection (a)(1) or (a)(3) of this section for a period of more than 3 years, except, where only Federal funds are available for bilingual education, and the school in which the student is enrolled—*

*(i) conducts a comprehensive evaluation of the overall academic progress of the student, and*

*(ii) the results of the evaluation indicate that failure to master English if impeding the academic progress of the student in meeting grade promotion and graduation standards.*

*Any student with respect to whom the requirements of this paragraph are met, may remain in the program for a fourth year, except as provided in division (ii) of subparagraph (B).*

*(B)(i) The evaluation required by paragraph (A) shall involve teachers and school personnel familiar with the students' overall academic progress. The results of such an evaluation shall be made available to the parents of the student.*

*(ii) An evaluation shall be carried out at the end of the fourth year the student is in the bilingual program described in subparagraph (A) if the student is to continue in the bilingual education program for a fifth year and shall be conducted in accordance with division (i) of this subparagraph.*

*(iii) Each evaluation shall indicate how the students' failure to master English will be addressed during the period a student is retained in a bilingual education program. The students' academic program during that period shall emphasize mastery of English.*

*(C) No student shall remain in a bilingual education program described in subparagraph (A) for more than 5 years.*

*(D) In carrying out this title, each local educational agency, institution of higher education, and private non-profit organization having an application approved under this section may intensify instruction for limited English proficient students throughout the program by—*

*(i) expanding the educational calendar of the schools in which such student is enrolled to include programs before and after school and during the summer months;*

*(ii) lowering per pupil ratios, including the use of professional and volunteer aids; and*

*(iii) the application of technology to the course of instruction.*

(e) An application for a grant authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall—

(1) be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in such programs, in accordance with criteria prescribed by the Secretary;

(2) be accompanied by documentation of such consultation and by the comments which the Council makes on the application;

(3) contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served; and

(4) include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(f) An application for a grant under subsections (a)(1), (a)(2), and (a)(3) of this section may be approved only if the Secretary determines—

(1) that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction;

(2) that in designing the program for which application is made, the needs of the children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials; and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children;

(3) that the program will be evaluated in accordance with a plan that meets the requirements of section 733 of this title;

(4) that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant such State and local funds, except that nothing in this clause shall—

(A) preclude a local education agency from using funds under this title for activities carried out under an order of a court of the United States or of any State respecting services to be provided such children, or to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 with respect to services to be provided such children; or

(B) authorize any priority or preference to be assigned by the Secretary to the funding of the activities under this title;

(5) that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to

promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under this title is reduced or no longer available;

(6) that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program and that, to the extent possible, college or university credit will be awarded for such training; and

(7) that the provision of assistance proposed in the application is consistent with criteria established by the Secretary, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, taking into consideration—

(A) the geographic distribution of children of limited English proficiency;

(B) the relative need of persons in different geographic areas within the State for the kinds of services and activities authorized under this title;

(C) [and] with respect to grants to carry out programs described in subsections (a)(1), (a)(2), and (a)(3) of this section, the relative ability of particular local educational agencies within the State to provide such services and activities; and

(D) with respect to such grants, the relative numbers of persons from low-income families sought to be benefited by such programs.

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## PART B—DATA COLLECTION, EVALUATION, AND RESEARCH

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### PROGRAM EVALUATION REQUIREMENTS

SEC. 733. [(a)] The Secretary shall issue, within six months of the date of enactment of this section, regulations which set forth a comprehensive design for evaluating the programs assisted under part A of this title. Such regulations shall be developed by the Director in consulation with the National Advisory and Coordinating Council on Bilingual Education. Such regulations shall provide for the collection of information and data including—

(1) the educational background, needs, and competencies of the limited English proficient persons served by the program;

(2) the specific educational activities undertaken pursuant to the program; the pedagogical materials, methods, and techniques utilized in the program; and with respect to classroom activities, the relative amount of instructional time spent with students on specified tasks;

(3) the educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the program; and

(4) the extent of educational progress achieved through the program measured, as appropriate, by (A) tests of academic

achievement in English language arts, and where appropriate, second language arts; (B) tests of academic achievement in subject matter areas; and (C) changes in the rate of student grade-retention, dropout, absenteeism, referral to or placement in special education classes, placement in programs for the gifted and talented, and enrollment in postsecondary education institutions.

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